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MINISTRY OF LABOUR AND EMPLOYMENT

NOTIFICATION

New Delhi-2, the 3rd December 1957

No. LR-10(69)/57.—The following decision of Shri Salim M. Merchant, Member, Labour Appellate Tribunal, in respect of a matter referred to him under section 6 of the Industrial Disputes (Banking Companies) Decision Act, 1955, by the notification of the Government of India in the Ministry of Labour No. S.R.O. 3073, dated the 17th September, 1957, is hereby published for general information.

BEFORE SHRI SALIM M. MERCHANT, MEMBER, LABOUR
APPELLATE TRIBUNAL.

Reference (Banks) I of 1957

Workmen of the Banking Companies in the State of West Bengal

Versus

The employers in relation to these banking Companies.

Re: *Reference Under Sub-Section (1) of Section 6 of the Industrial Disputes
(Banking Companies) Decision Act, 1955 (41 of 1955)*

Calcutta, dated 5th November 1957

PRESENT:

Shri Salim M. Merchant, B.A. II.B.,—*Member.*

Industry: Banking

State: West Bengal.

Appearances:

For the workmen.—At the preliminary hearing on 21st September 1957, Shri Provat Kar, President, Bengal Provincial Bank Employees Association and General Secretary, All India Bank Employees Association, and later at the hearing on 24th October 1957 Counsel Shri S. K. Acharya, instructed by Shri T. Chakravarty, General Secretary, Bengal Provincial Bank Employees Association and instructed by Sushil Ghosh, Assistant Secretary, All India Bank Employees Association, for the workmen.

For the Banking companies.—Counsel Shri A. C. Mitra, instructed by Shri S. K. Mullick, Solicitor, and Shri R. B. Govindan, Law Officer, United Commercial Bank Ltd., for the Indian Banks Association.

Shri S. K. Mullick, Solicitor, Messrs. Sanderson & Morgons, Solicitors, instructed by Shri D. Nan for the Calcutta Exchange Banks Association.

DECISION

Government of India, Ministry of Labour & Employment by the following notification No. LR.10 (69)/57 dated 17th September, 1957, was pleased to make this reference to me under sub-section (1) of Section 6 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955).

NOTIFICATION

S.R.O. .—Whereas the workmen of banking companies in the State of West Bengal have demanded from the employers in relation to those banking companies, payment of compensatory allowance at the rate of 25 per cent. of their emoluments to meet the increased cost of living;

And whereas the Central Government is of the opinion that a difficulty or doubt has arisen as to the interpretation of the award of the All India Industrial Tribunal (Bank Disputes), Bombay, constituted by the notification of the Government of India in the Ministry of Labour No. S.R.O. 35, dated the 5th January 1952, as modified by the decision of the Labour Appellate Tribunal in the manner referred to in section 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955), in respect of the matter specified in the schedule hereto annexed;

Now, Therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby refers the said matter for decision to Shri Salim M. Merchant, Member, Labour Appellate Tribunal, constituted under section 5 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950).

SCHEDULE

Whether the demand for compensatory allowance by the workmen in the banking companies in West Bengal is covered by the directions contained in the award of the All India Industrial Tribunal (Bank Disputes) constituted by the notification of the Government of India in the Ministry of Labour No. S.R.O. 35, dated the 5th January 1952, modified as aforesaid.

(Sd.) A. L. HANDA, Under Secy.

[No. LR-10 (69)/57.]

2. Upon receipt of the notification on 20th September 1957, I issued notices for a preliminary hearing on 21st September 1957 on (1) The General Secretary, Bengal Provincial Bank Employees Association, (2) The General Secretary, All India Bank Employees Association and upon the Secretaries of (1) Calcutta Exchange Banks Association and (2) the Indian Banks Association.

3. At the preliminary hearing on 21st September 1957, Shri Provat Kar, M.P. appearing in his capacity as President of the Bengal Provincial Bank Employees Association and General Secretary of the All India Bank Employees Association, contended that in view of the provisions of Section 33 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act 1956, by which the Industrial Disputes (Appellate Tribunal) Act 1950, had been repealed, this reference was incompetent and I had no jurisdiction to entertain

the same. He further stated that beyond raising this objection, he did not want to take part in the proceedings. Shri S. K. Mullick, solicitor, representing the two Banks Association submitted that Shri Kar should be directed to reduce his objection in writing to enable the banks to meet his contention at the hearing of the reference. I, therefore, directed Shri Kar to submit his objection in writing.

4. As Shri Mullick wanted time to file the Banks' written statement in this reference and to prepare their case, I directed the workmen to file their written statement by 4th October 1957, and the banks to submit their statement in reply by 12th October 1957 and fixed the hearing of the reference on 16th October 1957. In view of the fact that a large number of workmen employed in a number of Banks in the whole of the State of West Bengal are concerned, in this reference, I thought it necessary to direct that a public notice should be published in English in "Amrit Bazar Patrika", in Bengali in the "Jugantar" and in Hindi in the "Viswamitra", for their information about the dates on which the parties were required to file their written statements, and of the hearing (See order dated 21st September 1957).

5. Thereafter, on 24th September 1957 Shri Mullick, Solicitor, representing the two Banks' Associations, after notice dated 23rd September 1957 duly served upon the General Secretary, Bengal Provincial Bank Employees Association, applied to me for expediting the hearing and disposal of this reference. As however, no notice had been served on the All India Bank Employees Association about this application, I directed Shri Mullick to renew his application after serving fresh notices upon both the Bank Employees Associations. Accordingly, fresh notices were served upon the two Bank Employees' Associations informing them of the application, but as Shri Ghosh, the Assistant Secretary of the All India Bank Employees' Association telephoned the office of the Tribunal to say that the notice was too short for him to appear at the hearing of the application, I did not hear the banks application on that day but directed Shri Mullick to renew the application on 25th September 1957 after serving fresh notices upon the two Banks Employees' Associations. (See order dated 24th September 1957).

6. Accordingly, on 25th September 1957 Shri Mullick renewed his application before me. From the affidavits filed, I was satisfied that both the Banks Employees' Association had refused to accept the Banks Associations' notice to them intimating that they would apply to me for expediting the hearing of the application and that in any case they were avoiding to remain present when the application was moved. I, therefore, heard Shri Mullick in support of the application for expediting the hearing and disposal of this reference. Shri Mullick stated that the Banks had decided not to take any time for filing their written statement and preparing their case. He further stated that the matter had become urgent inasmuch as the strike of the banks employees which had commenced in Calcutta on 18th September 1957 had since spread to the districts. I therefore vacated the order passed by me on 21st September 1957 and directed that both parties should file their written statements by 4.30 P.M. on 27th September 1957 and fixed the hearing of the reference at 11 A.M. on 28th September 1957. (See order dated 25th September 1957).

7. Notices to that effect were served upon the General Secretary, Bengal Provincial Bank Employees' Association and the General Secretary, All India Bank Employees' Association and notices were also published in the Amrit Bazar Patrika, Jugantar and Vishwamitra in the issues on 26th September, 1957.

8. In the meantime, the Government of India, Ministry of Labour & Employment, by notification No. LR. 10 (69)/57, dated 25th September 1957 made in exercise of the powers conferred by clause (d) of sub-section (1) of

Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred the industrial dispute between the 31 banking companies mentioned in Schedule I to the said notification and the workmen employed in the said banking companies in the State of West Bengal, to me for adjudication as one of the Tribunals constituted under Section 7A of the said Act. The subject matter of this reference is whether the demand of the Banks employees in West Bengal for compensatory allowance was maintainable and if so to what extent demand was justified.

9. The Indian Banks Association and Calcutta Exchange Banks Association filed their joint written statement in this reference but no written statement was received from either of the two Banks Employees' Associations or from any other union representing the workmen.

10. However, on 28th September 1957, an application was received from the Bengal Provincial Bank Employees' Association, applying for time to file its written statement and *inter alia* stating that "in any event the matter be adjourned till after 4th October 1957 for us to obtain the assistance and proper legal advice for placing our case before you as the Puja holidays are intervening" I, accordingly, adjourned the hearing to 30th September 1957 and on that date upon receipt of a further application for adjournment from the Bengal Provincial Bank Employees' Association and in view of the second reference to me under section 10 of the Industrial Disputes Act, made by the Government of India on 25th September 1957, I gave another opportunity to the workmen to file their written statement on 14th October 1957 with liberty to the banks associations to file their rejoinder, if any, by 21st October 1957 and adjourned the hearing of this reference to 24th October 1957.

11. I may also say that in the second reference I directed the workmen to file their written statement by 14th October 1957 and the banks to file their written statement by 21st October 1957 and also fixed the hearing of the second reference for 24th October 1957.

12. Neither the two Banks Employees' Associations nor any of the other union of workmen, filed any written statement in either of the two references by 14th October 1957, but at the hearing on 24th October 1957 the two Banks Employees' Associations appeared before me through Counsel Shri S. K. Acharya who verbally applied that the hearing of both the references be adjourned by a fortnight. He also filed a typed sheet containing copy of the letter dated 18th October 1957, addressed by the General Secretary, Bengal Provincial Bank Employees' Association to Dr. B. C. Roy, the Hon'ble Chief Minister, West Bengal and copy of the memorandum of settlement submitted by that union for the solution of the dead lock created by the Banks strike. In that typed sheet was also reproduced the statement in that connection issued by Dr. B. C. Roy, the Hon'ble Chief Minister of West Bengal. In support of the application for adjournment Shri Acharya stated that through the intervention of Dr. B. C. Roy, Chief Minister of the Government of West Bengal, the strike of the Banks' employees which had commenced on 18th September 1957 had been called off on 19th October 1957 and that one of the terms of settlement embodied in the memorandum submitted by the General Secretary of the Bengal Provincial Bank Employees' Association was, "that the employees will place before the West Bengal Government for transmitting to the Central Government revised terms of reference for the Tribunal, appointed by the Government of India to consider the question of compensatory allowance being given to their employees. The West Bengal Government will forward the case to the Central Government for their favourable consideration." Shri Acharya also relied upon the statement dated 18th October 1957 issued by Dr. B. C. Roy to which he had stated that he had agreed to forward to the Government of India, the suggestion, if any, of the employees for altering the terms of reference to the Tribunal by the Government of India.

13. Shri A. C. Mitra, learned counsel representing the Indian Banks Association, strenuously opposed this application for adjournment and his grounds were that as no order had been served upon this Tribunal by the Central Government revising the terms of the present references, they should be proceeded with. He pointed out that no time had been fixed within which the suggestion for the alteration of the reference was to be made by the banks employees and that Dr. B. C. Roy had only agreed to transmit to the Central Government the suggestions, if any, for the alteration of the reference which the employees might make and that there was nothing to suggest that the Central Government would accept any alterations in the terms of reference already made. Shri S. K. Mullick, Solicitor, representing the Calcutta Exchange Banks Association, and counsel Shri K. B. Bose, representing the United Bank of India Ltd., also opposed the application for adjournment.

14. As stated above, the Bengal Provincial Bank Employees' Association and the All India Bank Employees' Association have failed to file their written statement in this reference in spite of repeated opportunities having been given to them and in spite of their statement made in their application dated 28th September 1957 that they would file their written statement by 4th October 1957, if time were given to them till then for that purpose. Besides, since the strike was called off on 19th October 1957, the two Bank Employees Associations and particularly the Bengal Provincial Bank Employees' Association had taken no steps to intimate to the Government of West Bengal, to enable it to transmit to the Central Government, the alteration they desired in the order of reference already made. There is also nothing to indicate that the Central Government would accept the suggestion of the Banks employees, for alteration in the terms of the reference already made. Shri Acharya was emphatic in his assertion that unless the adjournment asked for was granted the two Bank Employees' Associations were not prepared to file their written statement in this or the reference under section 10 of the Industrial Disputes Act, 1947, or to take part in these proceedings.

15. It, therefore, appeared to me that the two Bank Employees' Associations were only trying to delay the expeditious disposal of these references, and were not serious in presenting their case in both the references. I, therefore, refused the application for adjournment asked for and thereupon Shri Acharya and the representatives of the Bengal Provincial Bank Employees' Association and the All India Bank Employees' Association withdrew from this and the reference under section 10 of the Industrial Disputes Act, and it has become necessary for me to proceed with the hearing of this reference, in their absence.

16. It is a matter of regret that the Bengal Provincial Bank Employees' Association and All India Bank Employees Association should have adopted this course of conduct, in spite of every opportunity having been given to them to present their case in this reference as well as in the reference under section 10 of the Industrial Disputes Act, 1947.

17. I may here state that the Bengal Provincial Bank Employees' Association moved the Hon'ble the High Court of Judicature at Calcutta under Article 226 of the Constitution against the order of reference herein and the subsequent order of reference dated 25-9-1957 under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947. In that petition this Tribunal was joined as a respondent and his Lordship the Hon'ble Mr. Justice Mullick was pleased on 5-10-1957, to issue a Rule as prayed for in terms of (a) and (b) of the petition and to make it returnable on 18-11-1957. A minute copy of the said order dated 5-10-1957, signed by the Court Officer was duly served on me on 7-10-1957 by Shri Ramanath Chose, Solicitor, representing the Bengal Provincial Bank Employees' Association. Later, upon the Banks Associations mentioning the matter before His Lordship on 10-10-1957, His Lordship was then pleased to direct that this Tribunal need not send the records and that

further directions with regard to the production of the record would be passed on 29-10-1957. As no stay order was granted by the High Court in the said petition and as the records were not required to be sent to the High Court, I have proceeded with the hearing of this reference.

18. Before dealing with this reference on its merits, it is necessary to refer to the point of validity of this reference and the jurisdiction of this Tribunal raised by Shri Provat Kar, at the Preliminary hearing on 21-9-1957. As I have stated earlier, Shri Kar merely stated this objection but did not urge any arguments in support thereof and thereafter neither of the two Employees' Associations have filed any written statement formulating this objection. However, since Shri A. C. Mitra, learned Counsel for the Banks has made his submissions on the point, I should like briefly to deal with the same. According to Shri Kar the Labour Appellate Tribunal had been abolished by section 33 of the Industrial Disputes (Amendment and Miscellaneous Provision) Act, 1956 (Act XXXVI of 1956) and thereafter a reference under Section 6 of the Industrial Disputes (Banking Companies) Act, 1955, to a Member of the Labour Appellate Tribunal was incompetent. It is true that by section 33(1) of the Industrial Disputes (Amendment & Miscellaneous Provisions) Act, 1956, the Industrial Disputes (Appellate Tribunal) Act, 1950, (48 of 1950), under which the Labour Appellate Tribunal was constituted, has been repealed with effect from 1st September, 1956. But section 33, which is reproduced below, is both a repealing and saving section:—

“33. (1) The Industrial Disputes (Appellate Tribunal) Act, 1950, is hereby repealed.

(2) Notwithstanding such repeal—

- (a) if, immediately before the commencement of this section, there is any appeal or other proceeding pending before the Appellate Tribunal constituted under the said Act, the appeal or other proceeding shall be decided and disposed of by the Appellate Tribunal as if the said Act had not been repealed by this Act;
- (b) the provisions of Sections 22, 23, 23-A of the said Act shall, in relation to any proceeding pending before the Appellate Tribunal, be deemed to be continuing in force;
- (c) any proceeding transferred to an industrial Tribunal under Section 23A shall be disposed of under the provisions of the Industrial Disputes Act, 1947,

and save as aforesaid, no appeal or other proceeding shall be entertained by the Appellate Tribunal after the commencement of this section, and every decision or order of the Appellate Tribunal, pronounced or made, before or after the commencement of this section, shall be enforced in accordance with the provisions of the said Act”.

19. In effect, sub-section (2) of Section 33 of the 1956 Act provides that notwithstanding such repeal the Labour Appellate Tribunal is to continue to function for disposal of pending appeals and applications. It is, therefore, not correct to say as was stated by Shri Kar that the Labour Appellate Tribunal has been abolished in the sense that it has ceased to exist. As emphasised by Shri Mitra, the learned Counsel for the Banks Association, the Tribunal exists in the eye of law, and to-day several members of the Labour Appellate Tribunal including myself are continuing to function as members thereof. Now, this reference has not been made under the Industrial Disputes (Appellate Tribunal) Act, 1950, but under the provisions of sub-section (1) of Section 6 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955). Under that section if in the opinion of the Central Government any doubt or

difficulty arises as to the interpretation of any provision of the Banks Award as amended it shall refer such matter for decision to a single member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950) or to an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, as it may by notification in the official gazette specify. Even after the repeal of the Industrial Disputes (Appellate Tribunal) Act, 1950, as long as there are members of the Labour Appellate Tribunal continuing to function as such, it would, in my opinion, be competent to the Central Government to make a reference to any one of them under Sub-section (1) of Section 6 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955). It is not denied that I am one of the members of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, and that I am continuing to function as such. It was, therefore, in my opinion competent for the Central Government to make this reference to me as a single member of the Labour Appellate Tribunal under sub-section (1) of section 6 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955). I, therefore, hold that this reference has been validly made and I have jurisdiction to entertain the same.

20. I now proceed to deal with the reference on its merits. The short point involved in this reference is one of interpretation and the point is whether the demand of the workmen of banking companies in West Bengal for payment of compensatory allowance to them at the rate of 25 per cent. of their emoluments (subsequently altered to 25 per cent. of their basic salary), with a minimum of Rs. 20/- per month to meet the increased cost of living, is covered by the directions contained in the Award of the All India Industrial Tribunal (Banks Disputes), otherwise known as the Sastri Tribunal, as modified by the decision of the Labour Appellate Tribunal and by the recommendations of the Bank Award Commission in the manner referred to in Section 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955).

21. It is, therefore, first necessary to give a brief account of the events leading up to the passing of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955).

22. On 30-4-1949, the Industrial Disputes (Banking & Insurance Companies) Ordinance (No. VI of 1949) was promulgated, by which the Central Government took upon itself the responsibility in the matter of settlement of disputes in respect of Banking and Insurance companies, that have branches and establishments in more than one State. Thereafter, on 13-6-1949 the Central Government referred for adjudication a number of disputes between the banking companies in the country and their employees to an All India Industrial Tribunal known after its Chairman, Shri K. C. Sen, retired judge of the High Court of Bombay, as the Sen Tribunal. That Tribunal gave its award in July 1950, which was published on 12-8-1950 in the Government of India Gazette. But the award was set aside by the Hon'ble Supreme Court in April, 1951. The matter was subsequently referred in January, 1952, to another All India Industrial Tribunal known as the Sastri Tribunal, which gave its award in April, 1953. On appeal, the Labour Appellate Tribunal by its decision dated 28-4-1954, made certain alterations in the award but the Government of India, by the Ministry of Labour S.R.O. No. 2732 dated 24-8-1954, modified the Appellate Decision under Section 15 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950). In making the modification the Government was necessarily guided by the material available at that time. It was, however, considered desirable to collect more complete data and to have

the matter investigated further in the light of those data. Government, therefore, appointed a single member Commission of Inquiry known as the Bank Award Commission consisting of a Judge of the Bombay High Court. The commission was requested to conduct a fact-finding enquiry and make recommendations as regard the further modifications, if any, necessary in the decision of the Labour Appellate Tribunal as adopted by the Government Modification Order. The Commission submitted its report dated 25th July, 1955 and in chapter XI thereof recommended certain modifications in the decision of the Appellate Tribunal. The Government accepted in full the recommendations of the commission of the substantive terms of the Award, and in order to give effect to the recommendations of the commission, the Government introduced a Bill in Parliament which was subsequently enacted as the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955). Considering that the dispute had been pending since 1949 and that it had taken so long to finalise the terms and conditions of service of the employees in question (Bank employees), it was considered desirable that those terms and conditions should remain in operation for at least five years instead of the normal period of one year than provided for in the Industrial Disputes Act, 1947. Accordingly, sections 3 and 4 of the Act, provide as follows:—

"3. APPELLATE DECISION TO HAVE EFFECT SUBJECT TO THE MODIFICATIONS RECOMMENDED BY THE BANK AWARD COMMISSION.—The appellate decision shall have effect as if the modifications recommended in Chapter XI of the Report of the Bank Award Commission, dated the 25th July, 1955, had actually been made therein, and the appellate decision as so modified shall be the decision of the Appellate Tribunal within the meaning of the Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950), and the award shall have effect accordingly."

"4. DURATION OF THE AWARD.—Notwithstanding anything contained in the Industrial Disputes Act 1947 (XIV of 1947), or the Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950), the award is now modified by the decision of the Appellate Tribunal in the manner referred to in Section 3 shall remain in force until 31st day of March, 1959."

23. It may here be noted that it was also considered advisable by Government to provide for a suitable machinery to resolve points of difference or doubt between the parties with regard to the interpretation or application of the terms of the Award as amended and Section 6 of the Act (41 of 1955), contains provisions with regard to it. Section 6 is as follows:—

"6. POWER TO REMOVE DIFFICULTIES.—(1) If in the opinion of the Central Government any difficulty or doubt has arisen as to the interpretation of any provision of the award as now modified by the decision of the Appellate Tribunal in the manner referred to in section 3, it shall refer for decision the matter in respect of which such difficulty or doubt has arisen to a single member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950), or to such Industrial Tribunal constituted under the Industrial Disputes Act, 1947 (XIV of 1947), as it may, by notification in the official Gazette, specify in this behalf.

(2) The Tribunal to which such matter is referred shall, after giving the parties a reasonable opportunity of being heard, decide such matter and its decision shall be final and binding on all such parties."

24. The present reference as stated earlier has been made under sub-section (1) of Section (6) as doubts and difficulties have arisen as to whether the demand of the workmen of the Banks in West Bengal for compensatory allowance to meet the increased cost of living is covered by the directions contained in the Sastri Award, modified as stated above.

25. It appears that in or about June 1957 demands were received by various banking companies from their respective employees and or unions representing them for an additional payment of 25 per cent. of their emoluments with a minimum of Rs. 20 as compensatory allowance on the ground of continued rise in the price of essential commodities. Replies by individual banks expressing their inability to concede the said demands were sent to the unions pointing out that the increase in the price of commodities was reflected in the cost of living index figure with which dearness allowance of bank employees had been linked. (See written statement para. 1 of the Banks). Thereafter on 28th August, 1957, the General Secretary of the Bengal Provincial Bank Employees Association addressed a memorandum to the Chairman of the Calcutta Exchange Banks Association and the Indian Banks Association Calcutta making a demand for payment to the bank employees as compensatory allowance at least 25 per cent. of their basic wage with a minimum of Rs. 20 on the same ground, namely the continued rise in the price of commodities. In the penultimate para. of the said memorandum the General Secretary recorded that the employees unions had already demanded of the respective banks payment of compensatory allowance and the replies received so far were far from satisfactory. It stated that "on behalf of the Bank employees of this State (West Bengal) we therefore desire to place our view points to you and to propose to see you in this connection in a deputation on Saturday the 24th August, 1957 at 12 a.m. in your office." It appears that a deputation accordingly met the Chairmen of the two Bank Associations but nothing satisfactory seems to have emerged from this meeting and thereafter the working committee of the Bengal Provincial Bank Employees' Association on 4th September, 1957, passed the following resolution:—

This Meeting of the Working Committee of the Bengal Provincial Bank Employees Association notes with disappointment and chagrin in the failure of the Bankers' Associations to concede to their demand of compensatory Allowance at the rate of 25 per cent. on Basic pay minimum Rs. 20 in consideration of steep and abnormal rise in food prices and other basic necessities of life in West Bengal and the Bankers' failure to communicate to B.P. B.E.A. their decision in reply to the Memorandum submitted on 23rd August, 1957 and 24th August, 1957, even to date, though assured that the same would be conveyed if not by 31st August, 1957 at least by 3rd September, 1957.

This Working Committee recalls that the Bankers Associations while receiving the deputation of B.P.B.E.A. had to admit the steep rise in prices in West Bengal and the same is not reflected in the Average All India Cost of Living Index, to which the D.A. of Bank employees is tagged.

This Meeting having considered that the expectations of the Bank employees of a peaceful settlement of this just demand has been belied by the Bankers decides that there is no other way left to the Bank employees but to go on strike on and from 18th September, 1957, till the demand is met. The Working Committee however still hope that the Bankers will see reason and will concede to the just demands of the employees, so as not to compel them to launch the strike.

While hoping for better sense to dawn on the Bankers and keeping all avenues of negotiated settlement open. The Working Committee calls upon the Bank Employees to prepare energetically for the strike. The B.P.B.E.A. is confident that the Bank employees will rise as one man to this call of Action, an empty stomach can neither work nor enjoy.

The B.P.B.E.A. is confident that the public in general and the Banking public in particular will appreciate the sufferings of the Bank employees from their own experience of rising prices and hard living and so will support the Bank employees in their struggle.

(Sd.) T. Chakravorti.

The resolution was forwarded to the Chairman of the two Banks associations. As it will be notice of in the said resolution, the bank employees decided to go on strike on and from 18th September, 1957, till their demand for compensatory allowance which was made on the ground of "steep and abnormal rise in food-grains and of other basic necessities of life in West Bengal", was granted. The strike actually commenced on 18th September, 1957 and was continued for 31 days, till it was called off on 19th October, 1957, as noticed earlier.

26. It will thus be seen that the demand for the payment of compensatory allowance made by the Banks Employees is on the ground of steep and abnormal rise in food prices and other basic necessities of life in West Bengal, and my sole task in this reference is to decide whether this demand is covered by the Shastri Award, modified as stated above.

27. The two Banks' Associations in their written statement and in their submissions made before me at the hearing of this reference have contended that this demand is covered by the directions contained in award of the All Industrial Tribunal (Bank disputes) as modified as stated above, and in support of this contention they have referred to the obnoxious & directions the Shastri Award, the Appellate Tribunal's decision and the Recommendations of the Bank Award Commission relating to the basic wages, dearness allowance, house allowance, and other allowances and benefits at present paid by them to their employees in West Bengal under the said award.

28. There were as many as 34 matters, as specified in Schedule II to the Government order of reference S.R.O. No. 36 dated 5th January 1952, which were referred for adjudication to the Sastry Tribunal. The dispute was on an all India basis and I may state here that Banks employees had also desired that the dispute should be adjudicated on an all India basis (See para 55 of the Labour Appellate Tribunal's decision at page 44). Practically every important point relating to the cash emoluments (basic pay, dearness allowance, house rent) and other terms and conditions of service of clerical and subordinate staff employed in Banks in India were covered by the adjudication. For the purpose of this reference it is necessary to refer mainly to the first four matters referred to the Sastry Tribunal, which related to (1) scales of pay including:—

- (a) whether the remuneration of workmen and their periodical increment should be correlated to their efficiency and attendance, and
- (b) Whether, if basic scales are recommended, such scales of pay of particular categories should be uniform all over India and whether the difference in the cost of living of the various centres should be adjusted by the grant of compensatory allowances.

2. Dearness allowance to staff as well as pensioners. Can a portion of the dearness allowance be transferred to, and absorbed in, the basic wage? In particular can this be done in the case of banks in the United Provinces in

respect of the allowance payable at the commencement of Shri B. B. Singh's award.

3. House rent allowance. If this allowance is payable, should it be paid to all workmen.

4. Other allowances (other than travelling allowance, conveyance allowance and halting allowance) payable, for example, education or children's allowance, washing allowance, hill allowance, fuel allowance, grain allowance, Poona Cantonment allowance, officiating allowance, scarcity allowance, border allowance, local allowance and six monthly accounting allowance.

29. I shall now deal with the relevant observations and directions on these points contained in the Sastry Award, the decision of the Labour Appellate Tribunal and the Report of the Bank Award Commission. However, before doing so, I may state that the Sastry Tribunal for the purposes of this All India adjudication, classified the country into three areas. In area I were comprised the cities of (i) Calcutta, (ii) Bombay (including greater Bombay, (iii) Madras, (iv) Delhi and (v) Ahmedabad. In area II were comprised all towns and cities, other than those included in Class I area, which according to the 1951 census possessed a population of one lakh and more and in Area III were comprised all places not already included in Class I and II (see para 80 at page 27 of the Sastry Award). This three fold classification of areas was meant to provide to a substantial extent for the difference in the cost of living in the different parts of the country.

30. The various Banks were classified into four classes, A,B,C,D on the basis of their working funds. (see para 55 at page 19 of the Sastry Award) which was the standard of their financial capacity to meet the demands of the Banks employees.

31. I might here pause and say that it was stated before me at the hearing that of the roughly about 9,000 Banks employees covered by the present reference, the vast majority of whom estimated at about 7,500 are employed in Calcutta city, which as I have stated earlier is classified as Class I area, and they are therefore entitled to the higher scales of pay, rate of dearness allowance, house rent allowance and other benefits fixed for the class I area.

32. The Sastry Tribunal awarded in all 12 scales of basic pay, for the four classes of Banks, the scale for each being different in each of the three areas, in which the country was divided by it. This scheme is explained in para 116 of the award where it is observed:

"Before laying down our scale, we might explain that what we propose to do is to have four scales for the four different groups of banks as classified by us. The difference in the cost of living in the different parts of the country are provided for to a substantial extent by having a three-fold classification of areas. The extra cost of house rent, over and above, its normal incidence will be covered by a special house rent allowance for a few and more costly places."

33. The 12 scales of basic pay awarded by the Sastry Tribunal for the clerical staff are to be found in para 119 of the Award (page 38). It is not necessary to re-produce all the 12 scales here, except to state that they constituted a combined running scale starting with Rs. 51 for the class D banks in area III with the maximum of Rs. 280 for the class A banks in area I.

34. Similarly for the subordinate staff also the Sastry Tribunal prescribed 12 scales of pay which are to be found in para 137 at page 42 of the Award. These scales also constitute a running scale starting with Rs. 28 for the class D banks in area III, with a maximum of Rs. 72 for the class A banks in area I.

35. In addition to these scales of basic pay the Sastry Tribunal prescribed for the clerical staff dearness allowance on a basis of $33\frac{1}{3}$ per cent. of the basic pay with a minimum of Rs. 35 and a maximum of Rs. 70 per month for A, B, C, D banks in area I and with a minimum of Rs. 30 with a maximum of Rs. 60 for area II and minimum of Rs. 25 and Rs. 40 for area III. (see para 120 at page 38). For the subordinate staff the Sastry Tribunal prescribed (see para 138) dearness allowance on a flat rate basis varying with the class of Bank and the area in which it was situated. The highest amount of dearness allowance being Rs. 35 per month for the class A banks in area I and the lowest amount being Rs. 10 for the class D bank in area III.

36. In addition to the dearness allowance thus prescribed for the clerical and subordinate staff, the Sastry Tribunal by the directions contained in para 152 (page 47) of its award, provided for an automatic adjustment of the rates of dearness allowance according to the variation in the cost of living for the future. Taking the figures of 144 (base 1944=100) which was the average of the All India working class cost of living index number for the year 1951, the Tribunal directed that if the average figure for each half year i.e. from January to June or from July to December of each calendar year should rise or fall by more than 10 points over 144, the dearness allowance for the succeeding half year should rise or fall by $7\frac{1}{2}$ per cent. of the basic pay. It further directed that the figure officially published in the Indian Labour Gazette should be taken as the correct index for calculating dearness allowance. The Tribunal in fixing the scale of adjustment observed:

"Another important matter which requires consideration is whether it is possible to make a provision for automatic adjustment of the rates of dearness allowance according to the variation in the cost of living at least for the future. It is undoubtedly desirable to do so if a reasonable formula can be arrived at. The difficulty so far has been the absence of an All India cost of living index. No doubt it is to some extent anomalous to rely exclusively on such an index which can only be an average All India index with reference to indices of several places in this huge sub-continent. But on the whole and to have an uniform rate as far as possible, it is not unreasonable to link the future dearness allowance with such an index." (para 152-page 46).

37. It is necessary to emphasize that this method of adjustment of dearness allowance provided for an automatic adjustment of the rates of dearness allowance payable to Bank employees, according to the variations in the cost of living. By this method of adjustment a flexibility is provided in the amount of dearness allowance which the Bank employees can draw for each month during any period of six months, depending upon whether there has been a rise or fall of 10 points in the average All India cost of living index number over the figure of 144 (144=100) during the previous six months. I shall revert to this subject a little later, when dealing with the decision of the Labour Appellate Tribunal and the recommendation of the Bank Award Commission on this method of adjustment.

38. But to proceed with the examination of the Sastry Tribunal's award on the remaining two of the four items, the Sastry Tribunal took the view that whilst normally house rent is included in Calculating the cost of living, there are big cities in the country in which housing accommodation is scarce and rents are normally high, notwithstanding the Rent Restriction Acts which are in force. It, therefore, thought necessary to consider those special cases and direct payment of house rent allowance, for Bank Employees working in cities with

a population exceeding seven lakhs, but for bank employees in Bombay and Calcutta an even higher rate of house rent allowance was provided as follows:—

CALCUTTA AND BOMBAY

- (a) Where pay does not exceed Rs. 100 per month—Rs. 8.
- (b) where pay exceeds Rs. 100 but not Rs. 200 per month—Rs. 12.
- (c) Where pay exceeds Rs. 200 per month—Rs. 16.

39. For the subordinate staff the Sastry Award granted a house rent allowance at a flat rate of Rs. 6 per month for other places with a population of seven lakhs and over.

40. Item No. 4 of the reference to the Sastry Tribunal was headed "Other Allowances", and which included a demand for local allowance. The Sastry Tribunal has dealt with this demand in para 182 (page 53) of its Award as follows:

"Local Allowance".—The allowance is intended to compensate the high cost of living in certain areas. In our award area-wise differentiation in pay and allowances including the dearness allowance has taken into account local differences. Besides, we have given a house rent allowance to cover the extra cost of accommodation in certain places. No further directions are necessary."

41. Against the Sastry Award the Bank Employees as also some of the Banks appealed to the Labour Appellate Tribunal. Before dealing with the alterations made by the Labour Appellate Tribunal in the Sastry Award, it is necessary to point out that even before the Labour Appellate Tribunal both employers and employees had laid emphasis on the desirability of fixing the wage structure on an All India basis. As observed by the Labour Appellate Tribunal in Para 38 (pages 38 and 39) of its decision:

"During the course of the discussion a great deal was said about the undoubted fact that prices and conditions of life vary greatly in different parts of India, but nevertheless it is the unanimous desire of the employers as well as the employees that the wage structure should be fixed on an All India basis, whatever the disadvantages may be."

The same point is again referred to in para 55 of the decision where it was observed:

"We accordingly appreciate the difficulties which are inherent in an all India adjudication, but since all the parties wish to have a decision on an all-India basis, and not State by State, we must endeavour to the best of our ability to satisfy that general requirement. It might well be that in the process some areas might get more than what they would have otherwise got, and others less, but that must be expected in the case of an all-India adjudication, and will be no more out of line than the application of the Central Government's scale of emoluments to all clerks wheresoever they may be in India."

42. The Labour Appellate Tribunal by its decision improved the scale of basic pay granted by the Sastry Tribunal, for the clerical staff. Those scales of pay are set out in para 109 of the Decision. With regard to the subordinate staff, the Labour Appellate Tribunal confirmed the scales of basic pay and house rent allowance prescribed by the Sastry Award.

43. The Labour Appellate Tribunal, however, granted a substantial increase in the rate of dearness allowance prescribed by the Sastry Award for the clerical staff, by prescribing the following rates of dearness allowance:—

"Dearness allowance for A, B, C, Class Banks

	<i>Minimum</i>		<i>Maximum</i>
Area I	Rs. 50	First slab of Rs. 100	50%
		second slab of Rs. 100	40%
		Thereafter	35%
Area II	Rs. 45	First slab of Rs. 100	45%
		Second slab of Rs. 100	35%
		Thereafter	30%
Area III	Rs. 40	First slab of Rs. 100	40%
		Second slab of Rs. 100	30%
		Thereafter	25%

*Dearness Allowance For D class Banks.
(Till 31-3-1959 and as for Class 'C' banks thereafter).*

	<i>Rate</i>	<i>Minimum</i>	<i>Maximum</i>
Area I	33-1/3%	Rs. 35/-	Rs. 70/-
Area II	33-1/3%	30/-	60/-
Area III	33-1/3%	25/-	40/-

44. For the subordinate staff also the rate of dearness allowance was increased as stated in para 112 of the decision.

45. With regard to the method of adjustment of the Dearness allowance the Labour Appellate Tribunal confirmed and retained the method of adjustment prescribed by the Sastry Award and observed in para 105 of the decision as follows:—

"The Sastry Tribunal came to the conclusion that the rate of dearness allowance of future half years commencing from July, 1953, to December, 1953, onwards should be linked to the rise or fall in all India cost of living index (see paragraph 152). The award accordingly directed that if the average figure for each half year from January to June and July to December of each calendar year should rise or fall by more than 10 points over 144 the dearness allowance for the succeeding half year should rise or fall by 7½ per cent. of the basic pay. Labour has taken objection to the quantum of dearness allowance and also to the ceiling imposed, but there is a general absence of objection to the scheme of dearness allowance as given by the award. We shall therefore retain the frame work of the scheme of dearness allowance, but shall alter the figures in such manner that a fair measure of neutralization is achieved. The basic wage, plus house rent allowance of each employee would then reach a figure which we consider to be fair a total emolument.

A contention was raised that a rise or fall of more than 10 points over 144 before any change is effected was too much, and that it should be reduced in order to allow for a closer and more accurate adjustment; but we do not think that this requires any alteration."

46. With regard to House Rent Allowance, the Labour Appellate Tribunal confirmed the rates prescribed by the Sastry Award for both the clerical and subordinate staff.

47. As stated earlier after the decision of the Labour Appellate Tribunal was made, the Government of India by Order, dated 24th August 1954 substantially modified the same and later appointed the Bank Award Commission to conduct a fact finding enquiry and make recommendations. The Commission consisted of the Hon'ble Shri Justice P. B. Gajendragadkar, who submitted his report on 25th July 1955, in which in the light of the facts ascertained and the conclusions reached by him, he made certain recommendations to Government. The recommendations which are stated in Chapter XI of the Report were accepted in full by the Government and were later incorporated by Section 3 in Act 41 of 1955.

48. The Bank Award Commission recommended that the Labour Appellate Tribunal's decision should be restored in the case of all A class banks—Indian and foreign; all B class Banks except the Bank of Bikaner and the United Bank of India and all C Class Banks except eight, subject to the modifications mentioned in clause 1(a) to 1(f) in Chapter XI of its Report. For the purposes of this enquiry the most important modification made in the Labour Appellate Tribunal's decision by the Bank Award Commission was the one relating to the method of adjustment of dearness allowance and this is stated in paragraph 105 of the Report and which I have re-produced below in full.

49. The following observation contained in paragraphs 89, 99, 105, and 106 of the Bank Award Commission's report relating to dearness allowance are also relevant for the present enquiry:—

Para 89—Chapter VI.

"In this chapter I propose to consider some preliminary questions. I will first take the question of dearness allowance. I shall preface my examination of the dearness allowance schemes adopted by the Sastry and Labour Appellate Tribunals by a few general observations on the question of dearness allowance on account of its important character in the existing context. In a sense, the present enquiry hinges largely on the question of adequacy or otherwise of the dearness allowance paid to bank employees. What is important to the wage earner or the salaried employee is not so much the amount of money he receives by way of remuneration as the quantity of goods and services which he can purchase with that money. The latter represents his real wages. When economic conditions change the quantity of goods and services he can obtain for a given amount of money also changes. He obtains less or more as prices rise or fall. It becomes necessary, therefore, to adapt labour incomes to the general economic situation in order to maintain existing standards of living. In a situation when prices are rising this could be done either by adjustments of wages or the grant of a special allowance to compensate for the rise in prices. The question of dearness allowance thus assumes considerable importance from the employees' point of view."

Para 99:

"The formula of dearness allowance proposed by the Sastry Tribunal, though simple in design, suffered from the defect that the rate of compensation was the same for all categories of employees within certain limits of the basic pay, which were Rs. 105 to Rs. 210 for area 1, Rs. 90 to Rs. 180 for area 2 and Rs. 75 to Rs. 120 for area 3. Thus quite a big slice of the basic wage structure was subject to a flat rate of dearness allowance. Here

the Tribunal departed from the fundamental principle advocated by the Fair Wages Committee that there should be 100 per cent. neutralisation of the increase in the cost of living for the lowest categories of wage earners and a lower rate of compensation for categories above the lowest."

Para 105:

"I have bestowed considerable thought on this question. There is, in my opinion, *prima facie* no justification for linking the Labour Appellate Tribunal dearness allowance formula which is otherwise unexceptionable to a method of adjustment which leads to anomalies. I feel at the same time that whatever alternate formula may be devised, it should have the merit of interfering as little as possible with the Labour Appellate Tribunal wage structure and of ensuring results not significantly different from those achieved by the Labour Appellate Tribunal formula. I accordingly recommend the following formulae for adjustment of dearness allowance:

Clerical Staff:—If the average all-India cost of living index for the half year ending June or December of any year should rise or fall by more than 10 points as compared to 144 (1944=100), the dearness allowance for the succeeding half year will be raised or lowered by one-seventh of the dearness allowance admissible at the index level of 144 for each variation of 10 points.

Subordinate Staff:—If the average all-India cost of living index for the half year ending June or December of any year should rise or fall by more than 10 points as compared to 144 (1944=100), the dearness allowance for the succeeding half year will be raised or lowered by one-tenth of the dearness allowance admissible at the index level of 144 for each variation of 10 points.

I would like to add in this connection that I consulted both bankers and employees in regard to the two formulae for adjustment of dearness allowance which I have just recommended. Employees, on the whole, agreed with my formulae, whilst there appeared to be a difference of opinion amongst bankers on this point.

50. In para 106 of its Report the Commission observed as follows:

"In examining the incidence of the above two formulae I have been guided mainly by the consideration that in the foreseeable future the all-India cost of living index is not likely to drop to a level below 125 (1944=100), which corresponds to an index of 325 on pre-war base. The Second Five-Year Plan contemplates deficit financing to the tune of Rs. 1000 crores. The Panel of Economists appointed by the Planning Commission felt that "a bolder Plan with an emphasis on employment and heavy industries has inevitably a large inflationary potential". I am advised that for some years to come the all-India index may probably fluctuate between 125 and 150 (1944=100). It may, therefore, be adequate for our purposes to allow for one adjustment downwards and one upwards in calculating the incidence of the new formula of adjustment. These adjustments will cover an index range of 125 to 163 (1944=100) or 325 to 424 on pre-war base."

51. From the foregoing, it is clear that:

(1) The whole scheme of the award of the all India Industrial Tribunal (Bank Disputes) modified as aforesaid is on an all India basis and not state-wise and it is clear that the workmen themselves had desired that the adjudication should be on an all India basis.

(2) That the method of adjustment of the dearness allowance, provides for an automatic adjustment to the rise or fall in the cost of living on an all India basis. The formula for adjustment which is now in force is the one recommended by the Bank Award Commission and it is that if the average all India cost of living index for the half year ending June or December of any year should rise or fall by more than 10 points as compared to 144 (1944=100) the dearness allowance for the succeeding half year will be raised or lowered by one seventh of the dearness allowance in the case of the clerical staff and one-tenth of the dearness allowance in the case of subordinate staff admissible at the index level of 144 for each variation of 10 points. As observed by the Bank Award Commission in para 105 of its Report, the bank employees themselves had on the whole agreed to this formula.

(3) That the demand for local allowance to compensate the high cost of living in certain areas was rejected as area-wise differentials in pay and allowances including the dearness allowance had taken into account local differences. The award has given a house rent allowance to cover the extra cost of accommodation in certain areas and also rise in prices of essential commodities.

(4) That the present emoluments paid to bank employees and their existing terms and conditions of service throughout the country have been fixed as the result of a careful and exhaustive investigations conducted over a period of years by a body of eminent adjudicators and jurists and that in the interest of giving a finality to the result of those enquiries, those terms and conditions of service have been enforced till the end of 31st March 1959 by Section 4 of the Industrial Disputes (Banking Companies) Decision Act 1955 (41 of 1955).

(5) That the directions contained in the award of the all India Industrial Tribunal (Bank Disputes) Tribunal modified as stated above, make it clear that the whole scheme of the Award particularly the scheme of dearness allowance and the method of adjustment thereof has taken into account and provides for automatically compensating the bank employees in case of any substantial rise in the cost of living.

52. The demand for compensatory allowance made by the Bank Employees is on the ground of the steep rise in the price of essential commodities which they say has taken place in the State of West Bengal. Their demand is that they should be paid this compensatory allowance to meet the increased cost of living. They had first demanded an increase by 25 per cent in their total emoluments with a minimum of Rs. 20/- per month but later the demand was modified to 25 per cent of basic pay with a minimum of Rs. 20/- per month. The demand in effect is for payment to them of higher dearness allowance to meet the increased cost of living on the alleged ground of steep rise in the State of West Bengal of the articles of daily necessities. A similar demand has also been put forward by Bank Employees in other States of the country.

53. From the foregoing analysis of the directions contained in the award of the all India Industrial Tribunal (Bank Disputes) modified as stated above, it is quite clear to me that the demand is covered by those directions, particularly by the directions relating to the method of adjustment of dearness allowance prescribed by para 105 of the Bank Award Commission.

54. The banks have contended that under the formula of adjustment the bank employees have not become entitled to payment of increased dearness allowance. For that purpose they have filed a statement showing the all India average consumer price index numbers for the working class for the period from January 1956 to June 1957, which covers three six monthly periods ending June 1956, December, 1956, and June, 1957. The index numbers are given for each month during this period with base 1944=100 and 1949=100 and a conversion of the index numbers with base 1949=100 to the increased number 1944=100 has been effected by multiplying the former figure by the conversion factor which is 1.38. The source for these figures are Indian Labour Gazette Volume XIV No. 9 for March, 1957, and Indian Labour Gazette Vol. XV No. 2 of August, 1957. The statement is as follows:—

All India Average consumer price index numbers for working class.

Sources: Indian Labour Gazette Vol. XIV No. 9, March, 1957.

Indian Labour Gazette Vol. XV No. 2, August, 1957.

Period	Base	Base
1956	1949=100	1944=100
January	97	133.86
February	97	133.86
March	100	138.06
April	103	142.14
May	104	143.52
June	106	146.28
Average for six months	101.17	139.61
July	107	147.66
August	109	150.42
September	108	149.04
October	109	150.42
November	110	151.80
December	109	150.42
Average for six months	108.67	149.96
1957		
January	107	147.66
February	107	147.66
March	107	147.66
April	107*	146.66
May	109*	150.42
June	111*	153.18
Average for six months	108	149.04

*Provisional.

NOTE.—To convert the 1949 base to the 1954 base, the former figure has been multiplied by 1.38 vide footnote to the tables at page 768 of the March 1957 volume and at page 200 of the August 1957 volume of the Indian Labour Gazette.

55. It will thus be seen that the average monthly index number for the period of 6 months ending June, 1956, with base 1944=100 was 139.61, which was lower by 4.39 points than cost of living index figure of 144 adopted by the bank award. The average monthly index number for the period of 6 months ending December, 1956, was 149.96, that is to say, there was a rise over the figure of 144 by 5.96 points and for the period of six months ending June, 1957, the average was 149.94, showing a rise of 5.04 points over the figure 144. It will thus be seen that during the three six monthly periods

ending June, 1956, December, 1956, and June, 1957, in no period of six months was there a rise in the index figure by 10 points over the figure of 144 to justify the payment of any increased dearness allowance to the bank employees under the terms of the Award. In fact there was not a rise of 10 points over the figure of 144 in any single month during the entire period from January, 1956, to June, 1957.

56. In the result, I am more than satisfied that the present demand for compensatory allowance is covered by the directions contained in the award of the All-India Industrial Tribunal (Bank Dispute) modified as aforesaid and I give my decision accordingly.

(Sd.)

Member,

5th November, 1957.

Labour Appellate Tribunal of India.
Calcutta.

P. M. MENON, Secy.

